

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Highland Wind Farm, LLC, for a Certificate of Public
Convenience and Necessity to Construct a 102.5 Megawatt Wind
Electric Generation Facility and Associated Electric Facilities, to be
Located in the Towns of Forest and Cylon, St. Croix County, Wisconsin

2535-CE-100

SECOND PREHEARING CONFERENCE MEMORANDUM

This memorandum orders the following consistent with the prehearing conference held on May 13, 2013, and pursuant to Wis. Admin. Code § PSC 2.04(1). Sections II and III are tentative, subject to Commission review. Efficient process requires that parties and Commission staff rely on this interim issue list and schedule, until ordered otherwise by the Commission.

I. The following are parties to this proceeding:**A. Applicant:**

1. Highland Wind Farm, LLC

B. Intervenors:

1. Forest Voice, Inc.
2. RENEW Wisconsin
3. Town of Forest
4. Clean Wisconsin

II. Issues:**A. The record shall present detailed evidence that addresses the following:**

1. Can the project comply with the noise standards in Wis. Admin. Code ch. PSC 128?
2. Can the project achieve a 40 dBA night-time noise standard at the six residences identified in the existing record as occupied by persons with special needs?
3. How effective curtailment will be as a noise mitigation strategy for this project?
4. Will the Applicant's proposed post-construction sound testing protocols and compliance procedures be effective, reasonable, and in the public interest?

B. Without limitation to any other relevant legal issue, briefs shall address the following:

1. Will the project, as modified to meet the noise standards described in Issues A.1 and A.2, remain within the scope of Commission jurisdiction under Wis. Stat. § 196.491(3)?

III. The schedule appears below:

- | | |
|---|---|
| • Friday, June 14, 2013, at 12 noon | Applicant and Intervenors who generally support -
Direct testimony and exhibits |
| • Tuesday, July 16, 2013, at 12 noon | Intervenors critical of the Application and Commission Staff -
Direct testimony and exhibits |
| • Tuesday, July 30, 2013, at 12 noon | All parties and Commission staff -
Rebuttal testimony and exhibits |
| • Tuesday, August 6, 2013, at 12 noon | All parties and Commission staff -
Surrebuttal testimony and exhibits |
| • Friday, August 9, 2012, at 12 noon | All parties and Commission staff -
Errata or replacement pages to testimony and exhibits |
| • Tuesday, August 13, 2013, at 9:30 a.m. | Party Hearing Session begins – PSC Building |
| • Tuesday, September 3, 2013, at 12 noon | Initial Briefs |
| • Tuesday, September 10, 2013, at 12 noon | Reply Briefs |

IV. Other facilitating matters:

A. Filing and Service

1. Procedure

- a. The assigned Commission staff attorney is the first point of Commission contact for a party on any procedural matter related to the docket.
- b. File by ERF. If ERF cannot accept a document, contact the Commission's Records Management Unit at (608) 261-8521 for further instructions.
- c. File all documents offered as exhibits except for the following:
 - i. An entire document that already appears on ERF in this docket. *See* Prehearing Conference Memorandum § IV. A. 4 (b).

- ii. An entire document, when only part of the document is relevant to the purpose of the filer. This applies to any document filed on ERF in any docket. *See* Prehearing Conference Memorandum § IV. A. 4 (c).
 - d. File a redacted public version of every document filed under a request for confidential handling. *See* Prehearing Conference Memorandum § IV. C., and Wis. Admin. Code § PSC 2.12(4).
 - e. Use the following ERF protocols when filing:
 - i. Match the filing with the best available “Document Type.”
 - 1. Use the naming convention for testimony and exhibits for the “Description” of the filing. *See* Prehearing Conference Memorandum §§ IV. D. 1 (a) and (c), but include no testimony page number.
 - 2. Except for the exhibit number, include no indication of confidential or public status.
 - ii. To upload a redacted public document:
 - 1. Use the “Redacted Document” section of the “Confidentiality Request Form” to upload such a document at the same time as the confidential version.
 - 2. Use the “Upload Redacted Document” form to upload such a document after the filing of the confidential version
 - f. Filing constitutes certification of service. *See* Wis. Admin. Code § PSC 2.06(3)(a).
 - g. Serve all filings on parties and Commission staff.
 - h. Serve by e-mail to the addresses on the Commission e-mail service list and the Commission docket coordinator. If size, format, or the protection from public release of information filed under request for confidential handling prevents e-mail service, serve by delivery on standard optical disc storage media to the same recipients on the e-mail service list and the Commission docket coordinator.
 - i. The Commission e-mail service list shall contain only one e-mail contact for each party. Parties and Commission staff may establish and maintain a courtesy copy e-mail list to which the Commission attaches no service requirements.
 - j. Serve the Commission docket coordinator any, but, unless otherwise required, file no party to all-party correspondence.
 - k. Party requests to the Administrative Law Judge sent by e-mail shall receive no response. Send no courtesy copy e-mails to the Administrative Law Judge, except in accordance with Prehearing Conference Memorandum § IV. B. 7.
 - l. In computing any period of time that follows service by a party or Commission staff, or that follows an order of the Administrative Law Judge, the day of e-mailing is the day of mailing. *See* Wis. Admin. Code § PSC 2.05(2). This applies regardless of any dated signature or ERF filing date stamp.
- 2. Discovery**
- a. File any response to a party discovery request or Commission staff data request as information becomes available. For any request made prior to the deadline to file rebuttal testimony, respond in full no later than 21 days after service of the

request, with an exception of 30 days allowed for just cause. For any request made in response to rebuttal testimony respond in full no later than 7 days after service of the request. For any request made in response to surrebuttal testimony respond in full no later than 2 days after service of the request.

- b.** Notify a requester of the intent to answer a discovery request or data request solely by objection, or by objection and partial-response, notwithstanding the objection, within 3 days after service of the request. For any request made in response to rebuttal testimony serve the notice 2 days after service of the request. For any request made in response to surrebuttal testimony serve the notice within 1 day after service of the request.
- c.** Serve any, but file no, party discovery requests or notices to object, with the Commission staff docket coordinator.
- d.** File a request for protective order to a discovery request or data request. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after filing of the response.
- e.** File any request to compel a response to a discovery request or data request 3 days after service of the notice to object. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after filing of the response.

3. Other Requests

- a.** File any request for intervention under Wis. Admin. Code § PSC 2.21(4). File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after the filing of the response.
- b.** Unless made at hearing, file any request to waive or modify the application of this order in particular circumstances for good cause. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after the filing of the response.
- c.** File any request for interlocutory review under Wis. Admin. Code § PSC 2.27. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after the filing of the response.
- d.** File any request for leave to file a non-party brief. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after the filing of the response.

4. Prehearing Testimony and Exhibits

- a.** File any prehearing testimony and exhibits indicated in the above schedule by the deadline assigned.
- b.** When offering as an exhibit, an entire document already filed on ERF in this docket, file only a letter that identifies the document by PSC REF #: and the exhibit number requested. File the letter under the “Prehearing/Prefiled Exhibit/Testimony” document type. File all such requests in one letter for each round of testimony.
- c.** When only part of a document relates to the purpose of the filer, file only the first page of the document and the relevant portion of the document. Offer testimony

from a prior docket, as an exhibit, only in the form of an excerpt from a sworn transcript.

- d. File any objection to prehearing testimony and exhibits by the deadline of the next round of filing. File any response by 12 noon 3 days after the filing of the objection and any reply by 12 noon 2 days after filing of the response. This paragraph does apply to the last round of prehearing testimony and exhibits. *See* Prehearing Conference Memorandum § IV. E. 2.
- e. File the volume of written testimony for any witness being compelled to appear, and corresponding exhibits, by the deadline to file rebuttal testimony.
- f. File all corrections to prehearing testimony and exhibits by one day prior to the party hearing session. Timely filed corrections require no request or pre-approval from the Administrative Law Judge, but such corrections are subject to objection at hearing.
 - i. For testimony, a correction may take the form of either a replacement page or an errata sheet that indicates the location of each correction by page and line number.
 - ii. For exhibits, a correction shall take the form of a replacement exhibit.

5. Post Hearing

- a. File any document not filed prior to the party hearing session but received into the record at the party hearing session by 12 noon 3 days after the last day of the party hearing session.
- b. File documentary evidence not previously filed but offered at the party hearing session for which offer into the record is delayed until after the party hearing session by 12 noon 3 days after the last day of the party hearing session unless a different filing date is set at the hearing.
- c. File the affidavit of any witness attesting to the truthfulness and accuracy of that witness's written testimony and exhibits offered into the record in the absence of a live oath or affirmation by 12 noon 3 days after the hearing.
- d. File any objection to or request to offer rebuttal or countervailing evidence for:
 - i. Any evidence offered by a member of the public, by 12 noon 2 days after service of the transcript of the public hearing session. File any response by 12 noon 3 days after the filing of the objection and any reply by 12 noon 2 days after filing of the response.
 - ii. Any documentary evidence not previously filed but identified at the party hearing session for which offer into the record is delayed until after the party hearing session, by 12 noon 3 days after the date of filing. File any response by 12 noon 3 days after the filing of the objection and any reply by 12 noon 2 days after filing of the response.
- e. File any transcript correction by 12 noon 5 days prior to the deadline to file the initial post hearing brief. In a docket without briefs file any transcript correction by 12 noon 5 days after issuance of the final transcript volume.
- f. File any request for leave to present additional evidence [*See* Wis. Stat. § 227.45(2)] or request to take official notice under Wis. Stat. § 227.45(3). Verify

any exhibits offered after the hearing by affidavit. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after the filing of the response.

- g.** File any response to a notice by the Commission of its desire to avail itself of any evidence in its possession under Wis. Stat. § 227.45(2), by 12 noon 3 days after the notice issues. File any reply by 12 noon 2 days after the filing of the response.
- h.** File any request for rehearing or reopening under Wis. Stat. §§ 196.39 or 227.49. File any response by 12 noon 5 days after the filing of the request. The Commission shall accept no reply from the requester.

6. Paper Copies

- a.** Within 5 calendar days after any filed document identified below appears on ERF, a party shall provide to the Commission Records Management Unit:
 - i.** 10 collated paper sets of all exhibits.
 - ii.** 10 collated paper sets of all prehearing testimony that contain any page rendered in color.

B. Hearing Preparation

- 1.** The scope of written testimony is narrowed with each round of filing such that it addresses only the testimony filed in the previous round.
- 2.** Unless a witness retracts a position stated in prior testimony that position is retained. To avoid unduly repetitive testimony, if restating a position stated in prior testimony is necessary, instead of providing that position again, incorporate the prior statement by reference.
- 3.** No evidence shall enter the record solely by citation to an Internet hyperlink or PSC REF #.
- 4.** Any party who compels a witness to appear at hearing shall create a volume of written testimony for that witness in the form of either a deposition or interrogatory. This requirement shall not apply if the party receives consent of the other parties and Commission staff prior to the deadline to file such testimony.
- 5.** A party shall endeavor to identify its employees or members who wish to file written comments or participate at the hearing in support of that party's position and shall use best efforts to organize the testimony of such witnesses in a manner that avoids undue repetition.
- 6.** The applicant shall make an adequate number of personnel with knowledge of the issues in this docket available at each hearing to answer questions from members of the public.
- 7.** Attempt to obtain consent under Wis. Stat. § 807.13, in sufficient time to plan an in-person witness appearance, if necessary.
- 8.** Contact parties, Commission staff and the Administrative Law Judge by 12 noon 1 day prior to the first day of the party hearing session to:
 - a.** Request to take a witness at a specific prearranged time.

- b. Identify the witnesses that a party or Commission staff intends to cross-examine. This does not waive the right to cross-examine other witnesses.
- c. Identify any need to conduct a portion of the hearing *in camera*.
- d. Identify any witness appearing by telephone. *See* Prehearing Conference Memorandum § IV. E. 4.
- e. Request the scheduling of additional hearing time.

C. Confidentiality

- 1. Wis. Admin. Code § PSC 2.12 already protects from public disclosure any record filed with the Commission under a request for confidential handling that meets the requirements of that section. Such protection renders unnecessary other protective measures available from the Administrative Law Judge to prevent public disclosure of a trade secret, or other confidential research, development, or commercial information filed in this docket unless and until a party demonstrates a specific and credible threat of disclosure.
- 2. The Commission shall hear *in camera* any oral testimony and cross-examination to which a claim that confidential handling under Wis. Admin. Code § PSC 2.12 should apply and place such testimony in a separate transcript volume. To maintain this claim, the claimant shall file a request as described in Wis. Admin. Code § PSC 2.12(3)(a) along with a redacted copy of the volume consistent with Wis. Admin. Code § PSC 2.12(4) by 12 noon 5 days after issuance of the volume by mail from the Administrative Law Judge. The claimant shall omit from the original volume any affirmation of the veracity of that volume from the court reporter. The redacted volume exists only for Commission staff to evaluate the claim and for public convenience. The redacted volume provides no authoritative record of the proceedings. In the case of any discrepancy between the original volume and the redacted volume, the original volume shall control.
- 3. The Commission shall afford to any transcript volume receiving confidential handling under Wis. Admin. Code § PSC 2.12 the same handling and retention process and procedure that applies to all other documents which the Commission grants confidential handling.

D. Format Requirements

- 1. **Prehearing Testimony and Exhibits**
 - a. Paginate every page of prehearing testimony, centered at the bottom, and according to the following convention:
 - “[identify the round of testimony]-[identify the party]-[identify the witness]-[page #]”
 - “Direct-PSC-Smith-1”
 - b. Page numbers for each filing shall begin at “1” and continue in numerical order for that filing.
 - c. Mark every exhibit using a cover page centered at the bottom, and according to the following convention:

- Ex.-[identify the party]-[identify the witness]-[exhibit #]”
- “Ex.-PSC-Smith-1”
- d. Exhibit numbers for each witness shall begin at “1” and continue in numerical order for that witness.
- e. Shade (use no color highlighting) any specific text filed under request for confidential handling treatment as follows:
 - Public Version: “The cost was [REDACTED]....”
 - Confidential Version: “The cost was \$2.00....”
- f. The public version shall contain no text beneath a redaction that computer manipulation of the document can reveal.
- g. Paginate any written testimony and mark any exhibit filed under request for confidential handling treatment under the proper numbering convention succeeded by the letter “c”.
 - “Direct-PSC-Smith-1c”
- h. Paginate any prehearing testimony and mark any exhibit filed publicly for which another version is filed under request for confidential handling treatment the proper numbering convention succeeded by the letter “p”.
 - “Direct-PSC-Smith-1p”
- i. Paginate any replacement page and mark any replacement exhibit with the same page or exhibit number as the original version, except the letter “r” shall immediately succeed the number.
 - “Direct-PSC-Smith-1r”
 - “Direct-PSC-Smith-1cr”
 - “Direct-PSC Smith-1pr”
- j. Refer to any existing prehearing testimony or marked exhibit by using the assigned page or exhibit number.
 - “As mentioned in Direct-PSC-Smith-15”
 - “I prepared Ex.-PSC-Smith-1....”
- k. Except for the existing testimony or a marked exhibit in this docket, include in any reference to a document already posted on ERF, the ERF identifier in the following format “PSC REF#:_____”.
 - “As demonstrated in the Applicant’s March 2001 report (PSC REF#: 123456)”

2. Paper copies

- a. Organize the paper submission according to the following convention:
 - i. Punch each paper filing to fit a standard three ring binder. Do not include a binder.
 - ii. For testimony, precede each submission with a tabbed 3-hole punched page that identifies the following:
 - “[round of testimony]-[party]-[witness]”
 - “Direct-PSC-Smith”
- b. For exhibits, precede each set of exhibits with a tabbed 3-hole punched page that indicates the following:
 - “Ex.-[identify the party]-[identify the witness]-[exhibit #]”

- “Ex.–PSC–Smith-1”
- c. For any filing made under a request for confidential handling, only submit in paper, the confidential version of the filing. Do not submit a paper copy of the redacted version of the filing.
- d. Every paper copy shall exactly duplicate its corresponding ERF filing, including any color rendering and, except for confidential versions, the PSC REF#.

3. Briefs

- a. For any filed motion, petition, brief, or request, and any response and reply thereto:
 - i. Use 12 point double-spaced type and one-inch margins.
 - ii. Shade (use no color highlighting) any specific text filed under request for confidential handling treatment as follows:
 - Public Version: “The cost was [REDACTED]....”
 - Confidential Version: “The cost was \$2.00....”
 - iii. The public version shall contain no text beneath a redaction that computer manipulation of the document can reveal.
 - iv. Cite to the record all noted evidence and assertions of fact.
 - v. Cite to no evidence or assertion of fact outside the record.
 - vi. Limit the number of pages as follows:
 - 1. Initial brief - 30 pages.
 - 2. Reply brief - 15 pages.
 - 3. Non-party brief - 15 pages.
 - 4. Request for rehearing or reopening and response to request - 15 pages.

E. Hearing Procedure

1. Before the call of witnesses, the Administrative Law Judge shall:
 - a. Hear corrections to the Pre-Hearing Witness and Exhibit List.
 - b. Hear any remaining corrections to the prehearing testimony and exhibits.
 - c. Hear any pending or allowable objections.
 - d. Enter the items identified on the Pre-Hearing Witness and Exhibit List into the record, as modified by any corrections and sustained objections.
 - e. The Administrative Law Judge shall hear oral arguments in lieu of briefs at the beginning of the first day of the party hearing session with respect to any pending motion for which the deadline to file briefs would not expire prior to that day.
 - f. If the Administrative Law Judge issues a Pre-Hearing Witness and Exhibit List, the items on the list shall enter into the record at the beginning of the first day of the party hearing session, subject to any verification by the witness, pending or allowable objections, and corrections to the list.
2. Object to the last round of prehearing testimony and exhibits at the beginning of the party hearing session.
3. The sponsor of any pre-filed testimony or exhibit not received into the record may make such filings into an offer of proof. The sponsor of any oral testimony not

received into the record may make a brief oral offer of proof. *See* Prehearing Conference Memorandum § IV. F. 3.

4. The order of appearances and cross-examination by parties shall follow the order of parties as provided in the list above. Commission staff shall follow all parties. Each party and Commission staff may arrange the order of its witnesses.
5. A rebuttable presumption of good cause under Wis. Stat. § 807.13, exists to allow witnesses to appear by telephone.
6. Prior to cross-examination, any witness may offer brief oral testimony that responds only to the last round of prehearing testimony or any subsequent testimony of another witness received at the hearing. Parties and Commission staff shall use best efforts in this matter to avoid undue surprise or prejudice.
7. Limit cross-examination of a witness by the length and scope required to reasonably investigate matters with respect to the testimony of that witness. To investigate beyond these parameters requires the party to have followed the applicable prehearing process for compelling the witness to appear at hearing for direct examination.
8. Provide an adequate number of copies of any document referred to during the hearing, but not previously offered into the record.
9. The Commission intends to webcast all hearings held in Madison. Therefore, the Commission will make no phone lines available to monitor hearing.

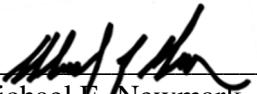
F. Post-Hearing Procedure

1. The record closes upon the issuance of the Post Hearing Witness and Exhibit List subject to a request for leave to present additional evidence or take official notice.
2. If before the Commission takes action to review the record a request is filed for leave to present additional evidence or take official notice, the Administrative Law Judge may grant the request upon reasonable terms if the additional evidence or noticed fact is material and good cause prevented its presentation at hearing. However, such request does not automatically stay any Commission open meeting discussion with respect to the existing record, or the issuance of a final decision by the Commission. Either action effects a denial of the request unless otherwise indicated by the Commission.
3. The record on review under Wis. Stat. § 227.55, shall contain any offer of proof. However, no offer of proof shall enter the evidentiary record unless the Commission or a court overturns the ruling to exclude the evidence and provides an opportunity for cross-examination or the offer of countervailing evidence.

G. ALJ Orders

1. Unless made at hearing, the Administrative Law Judge shall act only on a request officially filed.
2. Written orders and notices of the Administrative Law Judge shall be issued to parties using only the Commission e-mail service list.

3. Any request that contains a representation or certification of the consent of the parties and Commission staff shall be granted without order unless otherwise ordered within 3 days of filing.
4. Any request to which a response is authorized, but no timely response is filed, shall be granted without order, unless otherwise ordered within 3 days after the deadline to respond.
5. The Administrative Law Judge may waive or modify the application of this order in particular circumstances for good cause.



Michael E. Newmark
Administrative Law Judge

MEN: DL:00727485